

(1964) 07 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Supreme Court Application No. 15 of 1964

Deep Chand

APPELLANT

Vs

Bhago and Others

RESPONDENT

Date of Decision : 17-07-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 110
Constitution of India, 1950 — Article 133(1)
Limitation Act, 1908 — Article 179, 12(2)

Citation : AIR 1965 P&H 115

Hon'ble Judges : I.D. Dua, J;A.N. Grover, J

Bench : Division Bench

Judgement

Inder Dev Dua, J.

(1) This is an application under Article 133(1)(a) of the Constitution of India read with sections 109 and 110 and Order 45, CPC for leave to appeal to the Supreme court from the judgment and decree of this Court in Civil Regular Second Appeal No. 913 of 1962. A preliminary objection has been raised on behalf of the respondents that the application is barred by time.

(2) In order to appreciate the objection, it is necessary to note the relevant dates. The judgment and decree of this court are dated 24-7-1963, An application for a copy of the Judgment was made on 1-8-1963 and the same was attested on 11-10-1963. The present petition was presented to this Court on 2-1-1964. It is submitted that under S. 12(2) of the Indian Limitation Act (IX of 1908) prior to the enforcement of the Limitation Act (NO. 36 of 1963), time requisite for obtaining a copy of the Judgment could not be excluded in computing the period of limitation for the present application for leave of appeal and it was only the time requisite for obtaining a copy of the decree, sentence or order appealed from which could be excluded. in the instant case a copy of the decree having never been applied for, there was no question of excluding any time for the purpose of computing the period of limitation for the present

application for leave to appeal. On this reasoning it is submitted that the period of limitation for the present petition actually expired on the expiry of 90 days from 24-7-1963 as required by Article 179 of the First Schedule of the Indian Limitation Act (IX of 1908). In support of this contention, the counsel has relied on a Bench decision of this Court in Neki Kishen Sahai and Others Vs. Rup Chand and Another, which lays down that under S. 12(2) of the Limitation Act (IX of 1908) in the case of an application for leave to appeal to the Supreme Court, the time requisite for obtaining a copy of the decree alone is excluded and the time requisite for obtaining a copy of the Judgment is not excluded. Support for this view has been sought in reported case form number of reported decisions including one by the Lahore High Court. The same view had been taken earlier by another Bench of this Court in Tej Krishen v. Delhi Cloth and General Mills Co. Ltd. AIR 1950 P&h 195 . This decision was followed by the Bombay High Court in The Dharwar Bank Ltd. Vs. Vasudeorao Madhavrao Deshpande, These two Bench decisions are binding on us. Though the petitioner's learned counsel has questioned the correctness of these decisions no cogent ground has been advanced to persuade us to have the position re-examined by a larger Bench. The petitioner has contended that the term "decree" in S. 12 (2) of the Limitation Act of 1908 should be construed to include judgment. I am unable to agree with this bald contention particularly in view of the two Bench decisions of this Court.

(3) Reference at the bar has also been made to the amended Limitation Act No. 36 of 1963 section 12 now clearly provides for excluding the time requisite for obtaining a copy of the judgment on which the decree sought to be appealed from is founded even in computing the period of limitation for an application for leave to appeal therefrom: section 12 (2) and (3). In this connection the respondents' learned counsel has drawn our attention to Article 132 of the present Limitation Act which reduces the period of limitation application to the High Court for a certificate of fitness to appeal to the Supreme Court to 60 days. In the previous Act, it may be observed, the period for application for leave to appeal to the Supreme Court was 90 days under Article 179. Section 30 of the current Act provides, inter alia, that notwithstanding anything contained therein, any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act 1908 may be preferred or made within a period of 90 days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908, whichever period expires earlier. The respondents' learned counsel has submitted that if the period prescribed by the Act of 1908 has already expired before the enforcement of the Act of 1963 then the current Act cannot be utilised for reviving a dead claim. The petitioner's learned counsel has on the contrary contended that S.30 of the current Act can be applied irrespective of the fact that the period for presenting the application for leave to appeal has expired under the earlier Act and, therefore, section 12, as in force on 2-1-1964 when this petition was presented to this Court, would cover the case. It may be pointed

out that it is agreed that the act of 1963 was enforced on 1-1-1964.

(4) In my opinion S. 30 can be of no assistance to the petitioner in the case in hand because long before the enforcement of the current Act the period prescribed for the present application had expired. It is undoubtedly true that rules of limitation pertain to the domain of adjective law and they operate only to bar the remedy and not to extinguish the right. Being prima facie rules of procedure no one has any vested right in a period for instituting suits and appeals etc. laid by rules of limitation unless the contrary follows from the rules themselves, as the statute prescribing a period of limitation for instituting suits or preferring appeals etc. simply prescribes that the remedy can be exercised only within a limited period and not subsequently. At the same time when a statute of limitation has run out, the defence based on the statute may become a vested right which cannot thereafter be impaired. In other words the remedy by means proceeding for which the statute of limitation had fixed a period having been extinguished a vested right to urge such extinguishment vests in the defendants. To put it a little differently, there is no vested right to in the running of the statute of limitation unless it has completely run out and barred the action; as to the existing causes action; as to the existing causes of action which are not abraded, the amended law of limitation may perhaps be attracted. Where, however, one has been released from a demand to means of a statute etc., by the operation of limitation laws, he acquires a right of defence against its revival by amendment in the law of limitation, and this defence then becomes a vested right of defence against its revival by amendment in the law of limitation, and this defence then becomes a vested right which cannot be taken away by a law of procedure unless the legislative mandate says so expressly to by necessary intendment. Section 12(3) of the current Act, would therefore not be attracted unless the legislative mandate so directs. Section 30 of the amended Act is equally unavailing; sub-section (b) thereof on which reliance has been placed merely means so far as we are concerned, that notwithstanding anything contained in the current Act, any application for which the period of limitation is shorter than the period of limitation prescribed by the Act of 1908, may be preferred or made within a period of ninety days next after the commencement of the current Act or within the period prescribed for such application by the 1908 Act whichever expires earlier. Obviously the period prescribed for such application by the 1908 Act had expired earlier than even the enforcement of the current Act. The contention that for the purpose of computing the period prescribed by the 1908 Act, we should apply the provisions of S. 12(2) and (3) of the current Act which admittedly came into force on 1-1-1964, merely because the present petition was filed on 2-1-1964 is supported neither by principle nor by authority, and indeed the scheme of the current statute seems positively to negative it.

(5) The petitioner's counsel has as a last resort questioned the correctness of the Bench decisions of this Court and submitted that the view taken therein requires reconsideration. He has pointed out that Article 179 of the Act 1908

prescribed a period of ninety days for an application for leave to appeal to the Supreme Court under the CPC and this period was to begin to run from the date of the decree appealed from. There was no Article, according to the contention dealing with appeals from judgments, and the word "decree" in the third column against Article 179, therefore must be presumed to include a judgment from which an appeal is sought to be preferred to the Supreme Court. For this purpose according to the learned counsel in section 12(2) of the 1908 Act, the time requisite for obtaining a copy of the decree should also be construed to include time requisite for obtaining a copy of the judgment has not been fully developed at the bar. After the establishment of the Supreme Court, though a right of appeal to that Court was expressly given to appeal under the Constitution and the necessary adaptation in this respect was not made in Article 179; in this sense perhaps there was a lacuna left. But under S. 12(2) and (3) of the 1906 Act, however the Legislature appeared to have consciously prescribed for the exclusion of time only in obtaining copies of decrees appealed from and of judgments on which such decrees were founded; in case of applications for leave to appeal for reasons best known to the law-maker there was no provision made for excluding time spent in obtaining decree in framed and the decree is made appealable, the view taken by this Court has been not to exclude the time spent in obtaining copies of Judgment in applications for leave to appeal under the old Act., and as at present advised on the arguments addressed, I do not find any convincing ground for reconsidering the Bench decisions of this Court which are binding on us

(6) For the foregoing reasons, this petition fails and is hereby dismissed but without costs.

A.N. Grover, J.

(7) I agree. (8) Petition dismissed.